

111TH CONGRESS
1ST SESSION

H. R. 1266

To provide for retirement equity for Federal employees in nonforeign areas outside the 48 contiguous States and the District of Columbia, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 3, 2009

Mr. ABERCROMBIE (for himself, Ms. HIRONO, Mr. FALEOMAVAEGA, Mrs. CHRISTENSEN, Ms. BORDALLO, and Mr. YOUNG of Alaska) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

A BILL

To provide for retirement equity for Federal employees in nonforeign areas outside the 48 contiguous States and the District of Columbia, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Non-Foreign Area Re-
5 tirement Equity Assurance Act of 2009” or the “Non-For-
6 eign AREA Act of 2009”.

1 **SEC. 2. EXTENSION OF LOCALITY PAY.**

2 (a) LOCALITY-BASED COMPARABILITY PAYMENTS.—

3 Section 5304 of title 5, United States Code, is amended—

4 (1) in subsection (f)(1), by striking subpara-
5 graph (A) and inserting the following:

6 “(A) each General Schedule position in the
7 United States, as defined under section
8 5921(4), and its territories and possessions, in-
9 cluding the Commonwealth of Puerto Rico and
10 the Commonwealth of the Northern Mariana Is-
11 lands, shall be included within a pay locality;”;

12 (2) in subsection (g)—

13 (A) in paragraph (2)—

14 (i) in subparagraph (A), by striking
15 “and” after the semicolon;

16 (ii) in subparagraph (B) by striking
17 the period and inserting “; and”; and

18 (iii) by adding after subparagraph (B)
19 the following:

20 “(C) positions under subsection (h)(1)(C)
21 not covered by appraisal systems certified under
22 section 5382; and”; and

23 (B) by adding at the end the following:

24 “(3) The applicable maximum under this subsection
25 shall be level II of the Executive Schedule for positions

1 under subsection (h)(1)(C) covered by appraisal systems
2 certified under section 5307(d).”; and

3 (3) in subsection (h)(1)—

4 (A) in subparagraph (B), by striking
5 “and” after the semicolon;

6 (B) by redesignating subparagraph (C) as
7 subparagraph (D);

8 (C) by inserting after subparagraph (B)
9 the following:

10 “(C) a Senior Executive Service position
11 under section 3132 or 3151, located within the
12 United States but outside the 48 contiguous
13 States and the District of Columbia, in which
14 the incumbent was an individual who on the
15 day before the date of enactment of the Non-
16 Foreign Area Retirement Equity Assurance Act
17 of 2009 was eligible to receive a cost-of-living
18 allowance under section 5941; and”;

19 (D) in clause (iv), by inserting “, except
20 for members covered by subparagraph (C)” be-
21 fore the semicolon; and

22 (E) in clause (v), by inserting “, except for
23 members covered by subparagraph (C)” before
24 the semicolon.

1 (b) ALLOWANCES BASED ON LIVING COSTS AND
2 CONDITIONS OF ENVIRONMENT.—Section 5941 of title 5,
3 United States Code, is amended—

4 (1) in subsection (a), by adding after the last
5 sentence the following: “Notwithstanding any of the
6 preceding provisions of this subsection, the cost-of-
7 living allowance rate based on paragraph (1) shall be
8 the cost-of-living allowance rate in effect on the date
9 of enactment of the Non-Foreign Area Retirement
10 Equity Assurance Act of 2009, except as adjusted
11 under subsection (c).”;

12 (2) by redesignating subsection (b) as sub-
13 section (d); and

14 (3) by inserting after subsection (a) the fol-
15 lowing:

16 “(b) This section shall apply only to areas that are
17 designated as cost-of-living allowance areas as in effect on
18 December 31, 2009.

19 “(c)(1) The cost-of-living allowance rate payable
20 under this section shall be adjusted on the first day of
21 the first applicable pay period beginning on or after—

22 “(A) January 1, 2010; and

23 “(B) January 1 of each calendar year in which
24 a locality-based comparability adjustment takes ef-
25 fect under paragraph (2) or (3) of section 4 of the

1 Non-Foreign Area Retirement Equity Assurance Act
2 of 2009.

3 “(2)(A) In this paragraph, the term ‘applicable local-
4 ity-based comparability pay percentage’ means, with re-
5 spect to calendar year 2010 and each calendar year there-
6 after, the applicable percentage under paragraph (1), (2),
7 or (3) of section 4 of the Non-Foreign Area Retirement
8 Equity Assurance Act of 2009, as the case may be.

9 “(B) Each adjusted cost-of-living allowance rate
10 under paragraph (1) shall be computed by—

11 “(i) subtracting 65 percent of the applicable lo-
12 cality-based comparability pay percentage from the
13 cost-of-living allowance percentage rate in effect on
14 December 31, 2009; and

15 “(ii) dividing the resulting percentage deter-
16 mined under clause (i) by the sum of—

17 “(I) one; and

18 “(II) the applicable locality-based com-
19 parability payment percentage expressed as a
20 numeral.

21 “(3) No allowance rate computed under paragraph
22 (2) may be less than zero.

23 “(4) Each allowance rate computed under paragraph
24 (2) shall be paid as a percentage of basic pay (including
25 any applicable locality-based comparability payment under

1 section 5304 or similar provision of law and any applicable
2 special rate of pay under section 5305 or similar provision
3 of law).”.

4 **SEC. 3. ADJUSTMENT OF SPECIAL RATES.**

5 (a) IN GENERAL.—Each special rate of pay estab-
6 lished under section 5305 of title 5, United States Code,
7 and payable in an area designated as a cost-of-living allow-
8 ance area under section 5941(a) of that title, shall be ad-
9 justed, on the dates prescribed by section 4 of this Act,
10 in accordance with regulations prescribed by the Director
11 of the Office of Personnel Management under section 8
12 of this Act.

13 (b) AGENCIES WITH STATUTORY AUTHORITY.—

14 (1) IN GENERAL.—Each special rate of pay es-
15 tablished under an authority described under para-
16 graph (2) and payable in a location designated as a
17 cost-of-living allowance area under section
18 5941(a)(1) of title 5, United States Code, shall be
19 adjusted in accordance with regulations prescribed
20 by the applicable head of the agency that are con-
21 sistent with the regulations issued by the Director of
22 the Office of Personnel Management under sub-
23 section (a).

1 (2) STATUTORY AUTHORITY.—The authority re-
2 ferred to under paragraph (1), is any statutory au-
3 thority that—

4 (A) is similar to the authority exercised
5 under section 5305 of title 5, United States
6 Code;

7 (B) is exercised by the head of an agency
8 when the head of the agency determines it to be
9 necessary in order to obtain or retain the serv-
10 ices of persons specified by statute; and

11 (C) authorizes the head of the agency to
12 increase the minimum, intermediate, or max-
13 imum rates of basic pay authorized under appli-
14 cable statutes and regulations.

15 (c) TEMPORARY ADJUSTMENT.—Regulations issued
16 under subsection (a) or (b) may provide that statutory
17 limitations on the amount of such special rates may be
18 temporarily raised to a higher level during the transition
19 period described in section 4 ending on the first day of
20 the first pay period beginning on or after January 1,
21 2012, at which time any special rate of pay in excess of
22 the applicable limitation shall be converted to a retained
23 rate under section 5363 of title 5, United States Code.

1 **SEC. 4. TRANSITION SCHEDULE FOR LOCALITY-BASED**
2 **COMPARABILITY PAYMENTS.**

3 Notwithstanding any other provision of this Act or
4 section 5304 or 5304a of title 5, United States Code, in
5 implementing the amendments made by this Act, for each
6 non-foreign area determined under section 5941(b) of that
7 title, the applicable rate for the locality-based com-
8 parability adjustment that is used in the computation re-
9 quired under section 5941(c) of that title shall be adjusted
10 effective on the first day of the first pay period beginning
11 on or after January 1—

12 (1) in calendar year 2010, by using $\frac{1}{3}$ of the
13 locality pay percentage for the rest of United States
14 locality pay area;

15 (2) in calendar year 2011, by using $\frac{2}{3}$ of the
16 otherwise applicable comparability payment approved
17 by the President for each non-foreign area; and

18 (3) in calendar year 2012 and each subsequent
19 year, by using the full amount of the applicable com-
20 parability payment approved by the President for
21 each non-foreign area.

22 **SEC. 5. SAVINGS PROVISION.**

23 (a) SENSE OF CONGRESS.—It is the sense of Con-
24 gress that—

1 (1) the application of this Act to any employee
2 should not result in a decrease in the take home pay
3 of that employee;

4 (2) in calendar year 2012 and each subsequent
5 year, no employee shall receive less than the Rest of
6 the U.S. locality pay rate;

7 (3) concurrent with the surveys next conducted
8 under the provisions of section 5304(d)(1)(A) of title
9 5, United States Code, beginning after the date of
10 the enactment of this Act, the Bureau of Labor Sta-
11 tistics should conduct separate surveys to determine
12 the extent of any pay disparity (as defined by sec-
13 tion 5302 of that title) that may exist with respect
14 to positions located in the State of Alaska, the State
15 of Hawaii, and the United States territories, includ-
16 ing American Samoa, Guam, the Commonwealth of
17 the Northern Mariana Islands, the Commonwealth
18 of Puerto Rico, and the United States Virgin Is-
19 lands;

20 (4) if the surveys under paragraph (3) indicate
21 that the pay disparity determined for the State of
22 Alaska, the State of Hawaii, or any 1 of the United
23 States territories, including American Samoa, Guam,
24 the Commonwealth of the Northern Mariana Is-
25 lands, the Commonwealth of Puerto Rico, and the

1 United States Virgin Islands, exceeds the pay dis-
2 parity determined for the locality which (for pur-
3 poses of section 5304 of that title) is commonly
4 known as the “Rest of the United States”, the
5 President’s Pay Agent should take appropriate
6 measures to provide that each such surveyed area be
7 treated as a separate pay locality for purposes of
8 that section; and

9 (5) the President’s Pay Agent will establish 1
10 locality area for the entire State of Hawaii and 1 lo-
11 cality area for the entire State of Alaska.

12 (b) SAVINGS PROVISIONS.—

13 (1) IN GENERAL.—During the period described
14 under section 4 of this Act, an employee paid a spe-
15 cial rate under 5305 of title 5, United States Code,
16 who the day before the date of enactment of this Act
17 was eligible to receive a cost-of-living allowance
18 under section 5941 of title 5, United States Code,
19 and who continues to be officially stationed in an al-
20 lowance area, shall receive an increase in the em-
21 ployee’s special rate consistent with increases in the
22 applicable special rate schedule. For employees in al-
23 lowance areas, the minimum step rate for any grade
24 of a special rate schedule shall be increased at the
25 time of an increase in the applicable locality rate

1 percentage for the allowance area by not less than
2 the dollar increase in the locality-based com-
3 parability payment for a non-special rate employee
4 at the same minimum step provided under section 4
5 of this Act, and corresponding increases shall be
6 provided for all step rates of the given pay range.

7 (2) CONTINUATION OF COST-OF-LIVING ALLOW-
8 ANCE RATE.—If an employee, who the day before
9 the date of enactment of this Act was eligible to re-
10 ceive a cost-of-living allowance under section 5941 of
11 title 5, United States Code, would receive a rate of
12 basic pay and applicable locality-based comparability
13 payment which is in excess of the maximum rate
14 limitation set under section 5304(g) of title 5,
15 United States Code, for his position (but for that
16 maximum rate limitation) due to the operation of
17 this Act, the employee shall continue to receive the
18 cost-of-living allowance rate in effect on December
19 31, 2009 without adjustment until—

20 (A) the employee leaves the allowance area
21 or pay system; or

22 (B) the employee is entitled to receive
23 basic pay (including any applicable locality-
24 based comparability payment or similar supple-
25 ment) at a higher rate,

1 but, when any such position becomes vacant, the pay
2 of any subsequent appointee thereto shall be fixed in
3 the manner provided by applicable law and regula-
4 tion.

5 (3) LOCALITY-BASED COMPARABILITY PAY-
6 MENTS.—Any employee covered under paragraph (2)
7 shall receive any applicable locality-based com-
8 parability payment extended under section 4 of this
9 Act which is not in excess of the maximum rate set
10 under section 5304(g) of title 5, United States Code,
11 for his position including any future increase to stat-
12 utory pay limitations under 5318 of title 5, United
13 States Code. Notwithstanding paragraph (2), to the
14 extent that an employee covered under that para-
15 graph receives any amount of locality-based com-
16 parability payment, the cost-of-living allowance rate
17 under that paragraph shall be reduced accordingly,
18 as provided under section 5941(c)(2)(B) of title 5,
19 United States Code.

20 **SEC. 6. APPLICATION TO OTHER ELIGIBLE EMPLOYEES.**

21 (a) IN GENERAL.—

22 (1) DEFINITION.—In this subsection, the term
23 “covered employee” means—

24 (A) any employee who—

1 (i) on the day before the date of en-
2 actment of this Act—

3 (I) was eligible to be paid a cost-
4 of-living allowance under 5941 of title
5 5, United States Code; and

6 (II) was not eligible to be paid lo-
7 cality-based comparability payments
8 under 5304 or 5304a of that title; or

9 (ii) on or after the date of enactment
10 of this Act becomes eligible to be paid a
11 cost-of-living allowance under 5941 of title
12 5, United States Code; or

13 (B) any employee who—

14 (i) on the day before the date of en-
15 actment of this Act—

16 (I) was eligible to be paid an al-
17 lowance under section 1603(b) of title
18 10, United States Code;

19 (II) was eligible to be paid an al-
20 lowance under section 1005(b) of title
21 39, United States Code;

22 (III) was employed by the Trans-
23 portation Security Administration of
24 the Department of Homeland Security
25 and was eligible to be paid an allow-

1 ance based on section 5941 of title 5,
2 United States Code; or

3 (IV) was eligible to be paid under
4 any other authority a cost-of-living al-
5 lowance that is equivalent to the cost-
6 of-living allowance under section 5941
7 of title 5, United States Code; or

8 (ii) on or after the date of enactment
9 of this Act—

10 (I) becomes eligible to be paid an
11 allowance under section 1603(b) of
12 title 10, United States Code;

13 (II) becomes eligible to be paid
14 an allowance under section 1005(b) of
15 title 39, United States Code;

16 (III) is employed by the Trans-
17 portation Security Administration of
18 the Department of Homeland Security
19 and becomes eligible to be paid an al-
20 lowance based on section 5941 of title
21 5, United States Code; or

22 (IV) is eligible to be paid under
23 any other authority a cost-of-living al-
24 lowance that is equivalent to the cost-

1 of-living allowance under section 5941
2 of title 5, United States Code.

3 (2) APPLICATION TO COVERED EMPLOYEES.—

4 (A) IN GENERAL.—Notwithstanding any
5 other provision of law, for purposes of this Act
6 (including the amendments made by this Act)
7 any covered employee shall be treated as an em-
8 ployee to whom section 5941 of title 5, United
9 States Code (as amended by section 2 of this
10 Act), and section 4 of this Act apply.

11 (B) PAY FIXED BY STATUTE.—Pay to cov-
12 ered employees under section 5304 or 5304a of
13 title 5, United States Code, as a result of the
14 application of this Act shall be considered to be
15 fixed by statute.

16 (C) PERFORMANCE APPRAISAL SYSTEM.—
17 With respect to a covered employee who is sub-
18 ject to a performance appraisal system, no part
19 of pay attributable to locality-based com-
20 parability payments as a result of the applica-
21 tion of this Act, including section 5941 of title
22 5, United States Code (as amended by section
23 2 of this Act), may be reduced on the basis of
24 the performance of that employee.

25 (b) POSTAL EMPLOYEES IN NON-FOREIGN AREAS.—

1 (1) IN GENERAL.—Section 1005(b) of title 39,
2 United States Code, is amended—

3 (A) by inserting “(1)” after “(b)”;

4 (B) by striking “Section 5941,” and in-
5 serting “Except as provided under paragraph
6 (2), section 5941”;

7 (C) by striking “For purposes of such sec-
8 tion,” and inserting “Except as provided under
9 paragraph (2), for purposes of section 5941 of
10 that title,”; and

11 (D) by adding at the end the following:

12 “(2) On and after the date of enactment of the Non-
13 Foreign Area Retirement Equity Assurance Act of 2009—

14 “(A) the provisions of that Act and section
15 5941 of title 5 shall apply to officers and employees
16 covered by section 1003(b) and (c) whose duty sta-
17 tion is in a nonforeign area; and

18 “(B) with respect to officers and employees of
19 the Postal Service (other than those officers and em-
20 ployees described under subparagraph (A)), section
21 6(b)(2) of that Act shall apply.”.

22 (2) CONTINUATION OF COST-OF-LIVING ALLOW-
23 ANCE.—

24 (A) IN GENERAL.—Notwithstanding any
25 other provision of this Act, any employee of the

1 Postal Service (other than an employee covered
2 by subsection (b) or (c) of section 1003 of title
3 39, United States Code, whose duty station is
4 in a nonforeign area) who is paid an allowance
5 under section 1005(b) of that title shall for all
6 purposes be treated as if the provisions of this
7 Act (including the amendments made by this
8 Act) had not been enacted, except that the cost-
9 of-living allowance rate paid to that employee—

10 (i) may result in the allowance exceed-
11 ing 25 percent of the rate of basic pay of
12 that employee; and

13 (ii) shall be the greater of—

14 (I) the cost-of-living allowance
15 rate in effect on December 31, 2009,
16 for the applicable area; or

17 (II) the applicable locality-based
18 comparability pay percentage under
19 section 4.

20 (B) RULE OF CONSTRUCTION.—Nothing in
21 this Act shall be construed to—

22 (i) provide for an employee described
23 under subparagraph (A) to be a covered
24 employee, as defined under subsection (a);
25 or

1 (ii) authorize an employee described
 2 under subparagraph (A) to file an election
 3 under section 7 of this Act.

4 **SEC. 7. ELECTION OF ADDITIONAL BASIC PAY FOR ANNU-**
 5 **ITY COMPUTATION BY EMPLOYEES.**

6 (a) DEFINITION.—In this section, the term “covered
 7 employee” means any employee—

8 (1) to whom section 4 applies;

9 (2) who is separated from service by reason of
 10 retirement under chapter 83 or 84 of title 5, United
 11 States Code, during the period of January 1, 2010,
 12 through December 31, 2012; and

13 (3) who files an election with the Office of Per-
 14 sonnel Management under subsection (b).

15 (b) ELECTION.—

16 (1) IN GENERAL.—An employee described
 17 under subsection (a)(1)–(2) may file an election with
 18 the Office of Personnel Management to be covered
 19 under this section.

20 (2) DEADLINE.—An election under this sub-
 21 section may be filed not later than December 31,
 22 2012.

23 (c) COMPUTATION OF ANNUITY.—

24 (1) IN GENERAL.—Except as provided under
 25 paragraph (2), for purposes of the computation of

1 an annuity of a covered employee any cost-of-living
2 allowance under section 5941 of title 5, United
3 States Code, paid to that employee during the first
4 applicable pay period beginning on or after January
5 1, 2010, through the first applicable pay period end-
6 ing on or after December 31, 2012, shall be consid-
7 ered basic pay, as defined under section 8331(3) or
8 8401(4) of that title.

9 (2) LIMITATION.—The amount of the cost-of-
10 living allowance which may be considered basic pay
11 under paragraph (1) may not exceed the amount of
12 the locality-based comparability payments the em-
13 ployee would have received during that period for
14 the applicable pay area if the limitation under sec-
15 tion 4 of this Act did not apply.

16 (d) CIVIL SERVICE RETIREMENT AND DISABILITY
17 RETIREMENT FUND.—

18 (1) EMPLOYEE CONTRIBUTIONS.—A covered
19 employee shall pay into the Civil Service Retirement
20 and Disability Retirement Fund—

21 (A) an amount equal to the difference be-
22 tween—

23 (i) employee contributions that would
24 have been deducted and withheld from pay
25 under section 8334 or 8422 of title 5,

1 United States Code, during the period de-
2 scribed under subsection (c) of this section
3 if the cost-of-living allowances described
4 under that subsection had been treated as
5 basic pay under section 8331(3) or
6 8401(4) of title 5, United States Code; and

7 (ii) employee contributions that were
8 actually deducted and withheld from pay
9 under section 8334 or 8422 of title 5,
10 United States Code, during that period;
11 and

12 (B) interest as prescribed under section
13 8334(e) of title 5, United States Code, based on
14 the amount determined under subparagraph
15 (A).

16 (2) AGENCY CONTRIBUTIONS.—

17 (A) IN GENERAL.—The employing agency
18 of a covered employee shall pay into the Civil
19 Service Retirement and Disability Retirement
20 Fund an amount for applicable agency con-
21 tributions based on payments made under para-
22 graph (1).

23 (B) SOURCE.—Amounts paid under this
24 paragraph shall be contributed from the appro-
25 priation or fund used to pay the employee.

1 (3) REGULATIONS.—The Office of Personnel
2 Management may prescribe regulations to carry out
3 this section.

4 **SEC. 8. REGULATIONS.**

5 (a) IN GENERAL.—The Director of the Office of Per-
6 sonnel Management shall prescribe regulations to carry
7 out this Act, including—

8 (1) rules for special rate employees described
9 under section 3;

10 (2) rules for adjusting rates of basic pay for
11 employees in pay systems administered by the Office
12 of Personnel Management when such employees are
13 not entitled to locality-based comparability payments
14 under section 5304 of title 5, United States Code,
15 without regard to otherwise applicable statutory pay
16 limitations during the transition period described in
17 section 4 ending on the first day of the first pay pe-
18 riod beginning on or after January 1, 2012; and

19 (3) rules governing establishment and adjust-
20 ment of saved or retained rates for any employee
21 whose rate of pay exceeds applicable pay limitations
22 on the first day of the first pay period beginning on
23 or after January 1, 2012.

24 (b) OTHER PAY SYSTEMS.—With the concurrence of
25 the Director of the Office of Personnel Management, the

1 administrator of a pay system not administered by the Of-
2 fice of Personnel Management shall prescribe regulations
3 to carry out this Act with respect to employees in such
4 pay system, consistent with the regulations issued by the
5 Office under subsection (a).

6 **SEC. 9. EFFECTIVE DATES.**

7 (a) IN GENERAL.—Except as provided by subsection
8 (b), this Act (including the amendments made by this Act)
9 shall take effect on the date of enactment of this Act.

10 (b) LOCALITY PAY AND SCHEDULE.—The amend-
11 ments made by section 2 and the provisions of section 4
12 shall take effect on the first day of the first applicable
13 pay period beginning on or after January 1, 2010.

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